

# Exhibit 3

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 1

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 CASE NO. 18-MD-2865 (LAK)  
4

5 IN RE:

6 CUSTOMS AND TAX ADMINISTRATION OF )  
7 THE KINGDOM OF DENMARK )  
8 (SKATTEFORVALTNINGEN) TAX REFUND )  
SCHEME LITIGATION )

9  
10  
11  
12  
13 C O N F I D E N T I A L  
14  
15  
16

17 REMOTE VTC VIDEOTAPED EXPERT DEPOSITION UNDER ORAL  
18 EXAMINATION OF  
19 GRAHAM WADE  
20

21 DATE: March 16, 2022  
22  
23  
24

25 REPORTED BY: MICHAEL FRIEDMAN, CCR

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 13

1       G R A H A M   W A D E ,  
2                   called as an expert witness, having been  
3       first duly sworn according to law, testifies as  
4       follows:

5

6

7       EXAMINATION BY MR. PRUDEN:

8           Q     Good morning Mr. Wade?

9           A     Good morning. Sorry.

10                Can we get the -- I can't actually  
11       see who's talking.

12               MR. OXFORD: Okay. Greg, can you  
13       say something, make sure we have our  
14       video fixed on you?

15               MR. PRUDEN: Sure. Can you hear me  
16       now? Can you see me now?

17               THE WITNESS: That's fine. Sorry.

18               MR. OXFORD: Yeah, you're ready for  
19       your close-up.

20               Just before you start, Greg, I  
21       wanted to put something on the record.

22               We have an agreement with counsel  
23       that communications during deposition  
24       breaks between the parties' counsel and  
25       the parties' expert will remain

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 43

1 documents -- Mr. Wade, are you aware of any  
2 similar documents to the corporate finance  
3 manual issued or maintained by SKAT?

4 A No, I'm not.

5 MR. OXFORD: Objection to form.

6 Q And in the course of your research  
7 for your report, did you look for any similar  
8 guidance from SKAT?

9 MR. OXFORD: Objection to form.

10 A No, I did not.

11 Q And did you -- do you know what?  
12 Why not?

13 Why didn't you look for that?

14 MR. OXFORD: Objection to form.

15 A Well, my understanding of -- you  
16 know, my approach to this was to try and  
17 understand the facts of the case. And my  
18 understanding of this role in this case is  
19 I'm not providing expert opinion as to Danish  
20 tax law, so my focus was on understanding the  
21 facts of the case and understanding what  
22 actually happened.

23 And all my opinions relate to what  
24 I think the transactions that the  
25 counterparties actually undertook were.

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 44

1 Q Okay. So your report is  
2 describing, then, your understanding of the  
3 facts surrounding the transactions?

4 MR. OXFORD: Object to form.

5 A Well, I think my -- my opinions are  
6 as laid out in the report. So the -- you  
7 know, the opinions taken in the whole, with  
8 the work in the report, those are my  
9 opinions.

10 And if you want me to talk about  
11 any specific individual one, I'm happy to do  
12 that.

13 Q Okay. But your report is not  
14 providing an opinion on the ultimate legal  
15 interpretation of the transactions you  
16 analyzed?

17 MR. OXFORD: Object to the form.

18 A That's not quite what I said. What  
19 I was saying is I did not understand my role  
20 to be one of providing expert opinions on  
21 Danish tax law matters.

22 That's slightly different.

23 Q Okay. And I'm not sure that was  
24 completely responsive to my question, though.

25 I just am asking you whether or

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 55

1 I do not believe I expressed legal opinions  
2 in the report.

3 Q Okay. We agree that you've not  
4 expressed legal opinions in the report.

5 Right?

6 MR. OXFORD: Objection to form.

7 A As I said, my opinions in my report  
8 are the opinions taken as a whole and they're  
9 my opinions, so.

10 Q Okay. Can you go to Paragraph 9 on  
11 Page 3, please?

12 At the end of the second line, can  
13 we agree that you wrote, "I do not express  
14 legal opinions in this report?"

15 A Sorry. Just let me read it.  
16 Paragraph 9?

17 Q Correct.

18 A (Witness reviewing.)  
19 Yeah.

20 Q Okay. And you are not expressing  
21 legal opinions on securities law in this  
22 report.

23 Right?

24 A I'm expressing opinions about my  
25 understanding of the facts of the transaction

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 56

1 and my experience as a financial practitioner  
2 in the securities markets.

3 Q Okay. But you're not expressing  
4 legal opinions on the securities laws in this  
5 report.

6 Right?

7 A I'm expressing --

8 MR. OXFORD: Objection to form.

9 A I'm expressing my view on the  
10 facts. It's not my place to, you know,  
11 determine the legal consequences of  
12 those -- of my opinions.

13 Q Okay. I'm just asking you a  
14 yes-or-no question.

15 You're not expressing legal  
16 opinions on securities law in this report.

17 Right?

18 A Well, I've said I do not express  
19 legal opinions in this report, so.

20 Q Okay. And likewise, you're not  
21 expressing legal opinions on tax law in this  
22 report.

23 Right?

24 A Correct.

25 Q Okay. You're not expressing legal

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 57

1 opinions on principles of Danish tax  
2 administration in this report.

3 Right?

4 MR. OXFORD: Objection to form.

5 A I have expressed no opinions  
6 whatsoever on the practices of Danish tax  
7 administration.

8 Q Okay. If we go back to Paragraph 1  
9 now on Page 1 -- are you there?

10 A Yeah.

11 Q Okay. If you look at the last part  
12 of the sentence after the semicolon, it says,  
13 "and whether the financial transactions  
14 executed by the various defendants would  
15 entitle an entity or individual to a  
16 dividend."

17 Do you see that?

18 A I see that.

19 Q So we just established that you're  
20 not expressing legal opinions in this report.

21 Right?

22 A I don't believe I need to express a  
23 legal opinion to -- for example, in the case  
24 of the Solo transactions, to conclude if  
25 there's no shares and there were no



CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 58

1 dividends, that -- I don't believe it's a  
2 legal conclusion to say that no entity  
3 received a dividend.

4 Q Okay. So --

5 A But somehow --

6 MR. OXFORD: Hold on. Greg, can  
7 you let the witness answer the question?

8 MR. PRUDEN: Sorry. I thought he  
9 was done. He can finish his answer.

10 A No, actually that's fine. It's  
11 fine. I'm done.

12 Q Okay. Well, we can agree that the  
13 opinions that you're expressing in this  
14 report are not legal opinions about whether  
15 the transactions that were executed by the  
16 various defendants would entitle them to a  
17 dividend.

18 Right?

19 MR. OXFORD: Objection, form.

20 A No. My opinions relate to the  
21 transactions that were executed and what  
22 happened. And as I said, in the case of Solo  
23 transactions, if there are no shares, I think  
24 it's -- I think it's clear my opinion is  
25 there were no shares, and therefore there

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 98

1 a final and binding agreement exists on the  
2 acquisition or sale of the share?"

3 MR. OXFORD: Object to the form.

4 A No, I wouldn't. Again, I wouldn't  
5 agree with that one because I don't think  
6 that's right in terms of when ownership  
7 rights associated with shares do change  
8 hands.

9 But I would also ask you to be a  
10 bit more precise in defining what you mean by  
11 "ownership rights."

12 Q Would you agree with the principle  
13 that "a buyer of a share owns the share at  
14 the time when a final and binding agreement  
15 exists on the acquisition of the share?"

16 MR. OXFORD: Object to the form.

17 A No.

18 Q Would you agree with that statement  
19 if I told you that that principle is being  
20 advanced by me in the context of Danish tax  
21 law?

22 MR. OXFORD: Object to the form.

23 A I think, as I've stated earlier,  
24 I'm not expressing opinions as to Danish tax  
25 law. So I would -- I would not have an

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 99

1 opinion on that question as it relates to  
2 Danish tax law.

3 Q Okay. Would you agree that when a  
4 final and binding agreement to acquire a  
5 share exists, that the buyer is therefore the  
6 only person liable to taxation in respect to  
7 any dividend that's received?

8 MR. OXFORD: Object to the form.

9 A Well, firstly, the -- you need to  
10 define the circumstances that relate to that,  
11 what tax jurisdiction you're talking about,  
12 what the circumstances of the trade are.

13 And so, on its face, I can't really  
14 answer that.

15 Q Okay. If I specify Denmark as a  
16 jurisdiction, would that help you?

17 MR. OXFORD: Object to the form.

18 A Well, then, I'm not here to  
19 express, and I don't believe I've expressed  
20 any opinions in my reports as to Danish tax  
21 law and how that would apply to any  
22 particular transaction.

23 Q How about on securities  
24 transactions in Denmark? Do you consider  
25 yourself to be expressing an opinion on

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 101

1 and binding agreement exists to buy a share,  
2 whether the only person liable to tax is the  
3 buyer?

4 MR. OXFORD: Object to the form.

5 A Well, your question earlier was  
6 whether I have an opinion on the tax  
7 treatment of a contract in an entirely  
8 hypothetical situation. And my answer was  
9 that on that hypothetical situation, I'm not  
10 expressing an opinion as to Danish tax law.

11 Q Okay. Would you agree that  
12 VP Securities, as Denmark's CSD, has an  
13 obligation to pay a dividend to shareholders  
14 in Denmark?

15 A I understand that for listed  
16 companies in Denmark whose shares are  
17 registered with VP Securities, that  
18 VP Securities is involved in the process of  
19 passing dividends to the relevant recipient.

20 Q Sorry. One second.

21 Do you understand anything about  
22 what VP Securities' involvement in paying a  
23 dividend to holders of Danish shares that are  
24 listed on Danish exchanges is?

25 MR. OXFORD: Objection to form.

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 102

1           A     I'm sorry — sorry to do this, but  
2     right at the end of your question, it broke  
3     up, so I didn't hear the end of the question.

4                     Can you repeat it again?

5           Q     No problem. If you ever need me to  
6     repeat a question, I'm happy to do that.

7                     Do you understand anything about  
8     what VP Securities' involvement in paying a  
9     dividend to holders of Danish shares that are  
10    listed on Danish exchanges is?

11                    MR. OXFORD: Object to the form.

12           A     Well, as I've said, it is my  
13    understanding that VP Securities maintains  
14    the ultimate share register. And so, at the  
15    point in time, i.e. the record date, it is  
16    VP Securities who ultimately confirms the  
17    underlying record holders and will therefore  
18    be involved in directing the payment from the  
19    issuing company to those record holders.

20                    Obviously, in many cases, those  
21    record holders will be a custodian or  
22    sub-custodian. So VP Securities is not the  
23    only person involved in that process, but  
24    they do have an important role in there.

25           Q     Okay. And do you understand that

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 106

1 have -- you know, there are a whole range of  
2 different forms of legal ownership.

3 So I need you to be a bit more  
4 precise.

5 Q Okay. Is it your understanding  
6 that what it means to own a share depends on  
7 the legal circumstances in which you're  
8 asking that question?

9 MR. OXFORD: Objection to form.

10 A Again, the question of what  
11 ownership means for the particular purposes  
12 in which that question's asked, I need to  
13 know what purposes it's asked, and all the  
14 facts and circumstances that surround that  
15 particular share.

16 So if you give me a specific  
17 example, I can give you my thoughts.

18 Q Is it your testimony that you're  
19 unable to tell me, as a general principle,  
20 what it means to be a legal owner of a share  
21 in Denmark?

22 MR. OXFORD: Objection.

23 A What I'm saying is that over the  
24 course of my career I spent a long time and I  
25 understand that the question you're asking me

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 107

1 can be a much more complex question than it  
2 appears because it requires understanding the  
3 exact facts and circumstances, for what  
4 purpose, i.e., you know, is it tax, is it  
5 accounting, is it regulation, is it, you  
6 know, record holder from the issuer's  
7 perspective?

8           There's a range of different ways  
9 in which one can think about who the owner of  
10 a share is. And without the full facts and  
11 circumstances and the specifics and for what  
12 purpose the question is being asked, I -- I  
13 can't answer it.

14           Q   Is it your understanding that the  
15 legal owner of a share can be a different  
16 person in different circumstances?

17           MR. OXFORD: Object to the form.

18           A   It would be highly unusual if a  
19 given share for the same -- going back to my  
20 point about there are different  
21 purposes -- if we're talking about a specific  
22 definition of "ownership," in my experience,  
23 it would be highly unusual if two people can  
24 be the same owner of the share for the same  
25 purpose.

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 125

1 when did the buyer of the shares become the  
2 legal owner of the shares?

3 A I'm really sorry, that -- sorry. I  
4 just didn't catch that question.

5 The sound has been a bit worse  
6 since we've restarted again. I don't know if  
7 that's -- that's the only change.

8 Sorry, but could you repeat the  
9 question?

10 Q Yes. For the purposes of making a  
11 tax reclaim application in Denmark, in the  
12 transactions that you analyzed in this case,  
13 when did the buyer of the shares become the  
14 owner of those shares?

15 MR. OXFORD: Object to the form.

16 A I don't believe I've given an  
17 opinion as to the requirements for when or  
18 what exactly is required to make a tax  
19 reclaim.

20 My opinions relate to the fact that  
21 if we go back to the tax vouchers, there are  
22 three key facts in the tax vouchers.  
23 Number 1, that the pension plans held shares;  
24 Number 2, that they received dividends; and  
25 Number 3, that they suffered tax.



CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 126

1                   And my opinions are fundamentally  
2           that those three statements are false. But I  
3           have offered no opinion as to, you know, what  
4           the Danish tax consequences of -- as a result  
5           of that are.

6           Q     Okay. Well, you said that -- you  
7           told me in response to a question that I  
8           asked you, Mr. Wade, whether and in what  
9           context I was using the term "ownership"  
10          would inform your answer to my question.

11                  I'm not asking you about opinions  
12          that you provided or not. What I'm asking  
13          you right now is whether you understand that  
14          for the purpose of making a tax reclaim in  
15          Denmark, when, in a securities transaction,  
16          the ownership would transfer from the seller  
17          to the buyer?

18                  MR. OXFORD: Object to the form.

19           A     And my response is that given the  
20          opinions that I gave and the fact that I am  
21          not giving opinions on Danish tax law, I have  
22          not given an opinion on the question of what  
23          the precise conditions required are to obtain  
24          a Danish tax reclaim.

25                  But it's my opinion that the three

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 131

1 MR. OXFORD: Object to the form.

2 A Again, I'm going to ask you to  
3 define for what purpose.

4 Q Mr. Wade, I'm using your words.  
5 You told me a second ago that your  
6 understanding of the term "dividend" is "a  
7 dividend is a payment from an issuing company  
8 made to a shareholder in respect of that  
9 person being an owner of shares in a  
10 company. "

11 What do you mean when you say that  
12 the person is the "owner of shares in a  
13 company" in that context?

14 A Okay. In that particular context,  
15 I mean that the person is the -- in whatever  
16 format that particular -- depending on the  
17 articles of association of that company and  
18 whatever form the register is held, that that  
19 person is, at the time when the dividend  
20 right accrues, i.e., the record date, that  
21 person is the record holder on the company's  
22 share register, and that the issuing company  
23 pays the dividend to.

24 Q Okay. So if you are not on the  
25 share register, you are not the owner of the

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 135

1           A     I'm sorry, but you just introduced  
2     the word "deemed" there, so deemed for what  
3     purpose? What's the context? What's the  
4     transaction?

5                 I just -- my experience over many  
6     years involved in structured finance  
7     transactions is that precision is required.  
8     And so, if you give me precision, I will do  
9     my best to answer.

10          Q     Okay. I want to go back to what  
11     you told me again, and that's that "the  
12     dividend is a payment from an issuing company  
13     made to a shareholder in respect to that  
14     person being an owner of shares in a  
15     company. "

16                 I'm asking you whether being an  
17     owner of shares in a company in that context  
18     is synonymous with being on the share  
19     register?

20                 MR. OXFORD: Object to the form.

21          A     For the purpose -- in the way I  
22     defined what a dividend is, the dividend is a  
23     payment made by the issuing company to the  
24     person -- we can call them the owner for  
25     these purposes -- who is on the shareholder

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 136

1 register on the record date.

2 So, for these purposes, "owner"  
3 means the person on the shareholder register.  
4 But "owner" in any other context may well  
5 have a completely different meaning.

6 Q Okay. And for these purposes, when  
7 does the person who is considered to be the  
8 owner -- using your definition  
9 again -- become the owner?

10 MR. OXFORD: Object to the form.

11 A It would depend on the full details  
12 of the article of association of the company  
13 and exactly how it works. But in simple  
14 terms, it would be when whoever the registrar  
15 for the company is puts that person onto the  
16 shareholder register as being the current  
17 owner of that share.

18 Q Do you reference the details of the  
19 articles of association of any of the Danish  
20 issuers whose transactions you analyzed in  
21 this case?

22 MR. OXFORD: Object to the form.

23 A No, but that's not necessary in the  
24 context of understanding these particular  
25 transactions because, first of all, the

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 137

1 specific definition that we've been talking  
2 about I don't think is actually relevant to  
3 any of my opinions.

4 And secondly, it's my  
5 understanding, based on a combination of  
6 market practice and the documents I've  
7 reviewed in this case, that the nominee  
8 holder of a share on the record date is  
9 determined by VP Securities and what register  
10 they maintain, which is the ultimate and only  
11 record of who the nominee holder of the share  
12 is, but purely for the purposes of defining  
13 who the issuing company pays a dividend to.

14 Q Okay. Have you reviewed any  
15 documents in this case that would indicate to  
16 you who was the owner of a share?

17 MR. OXFORD: Object to the form.

18 A I'm sorry, but you're just using  
19 the phrase "owner," and I think I've been  
20 clear that unless you're precise about what  
21 you mean by ownership, I can't give an answer  
22 to that.

23 Q Okay. As a matter of general  
24 English, have any documents you've reviewed  
25 in this case offered you any opinion on who

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 152

1 date and agreed price terms typically  
2 indicate that the buyer of securities will  
3 receive a dividend?

4 MR. OXFORD: Object to the form.

5 A It's -- it's my position based on  
6 market practice and understanding how the  
7 equity finance markets work that the -- and I  
8 think I've laid this out quite extensively in  
9 my report -- that in a cum ex transaction,  
10 the whole point of a cum ex transaction is  
11 that a -- the seller is not selling the real  
12 dividend because they don't have it.

13 So -- but we'd have to get into a  
14 very specific cum ex transaction and go  
15 through the details of that if you'd like me  
16 to give you a more precise answer.

17 Q Okay. So, as a general matter,  
18 it's not accurate that the transaction date  
19 and the agreed price terms for the cum ex  
20 transactions you analyzed typically indicate  
21 that the buyer of the securities will receive  
22 a dividend?

23 That's my question.

24 MR. OXFORD: Object to the form.

25 A In the specific cum ex transactions

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 168

1 financial institutions, hedge funds, and  
2 other counterparties who were executing  
3 cum ex transactions.

4 But it is my -- based on my market  
5 practice and understanding and my personal  
6 knowledge, I was not aware of anyone who  
7 either -- prior to my involvement in this  
8 case, I was not aware of anyone who,  
9 post-2012 outside Germany, thought that a  
10 cum ex transaction was effective.

11 That's the substance of my  
12 testimony on that point.

13 Q Okay. And in all your experience,  
14 at any point, was there any aspect of your  
15 job in which you were involved in either  
16 executing, overseeing, or approving cum ex  
17 transactions?

18 MR. OXFORD: Objection to form.

19 A To the best of my knowledge, no.

20 Q Okay.

21 MR. PRUDEN: Why don't we take that  
22 lunch break now and then we can come  
23 back in a half-hour or so.

24 MR. OXFORD: Okay. Say in half an  
25 hour. Thanks, Greg.

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 171

1 cum ex seller was long at the time where it  
2 entered into the cum ex sale.

3 Is that -- my understanding of your  
4 assumption correct?

5 Q Well, I'm not going to agree that  
6 that's different from the facts, but that's  
7 the assumption I'm asking you to assume.

8 A Okay. Understood.

9 That would not change my ultimate  
10 opinion conclusion that the information on  
11 the tax vouchers was incorrect.

12 Q Okay. And what information on the  
13 tax vouchers would have been incorrect in  
14 that circumstance?

15 MR. OXFORD: Object to form.

16 A All -- all three. All three of the  
17 key items on the tax voucher would still be  
18 incorrect.

19 Because the cum ex purchaser did  
20 not own the shares on the record date, it did  
21 not receive the dividend, and it did not  
22 suffer the tax.

23 Q Okay. What is the basis for your  
24 assertion that in any circumstance, a  
25 purchaser must own the shares on the record



CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 174

1 compensation payment.

2 If -- and I express no opinion on  
3 this because I'm not expressing opinions on  
4 Danish tax -- if the pension plan were able  
5 to take a receipt for a dividend compensation  
6 payment to the Danish tax authorities and  
7 make a reclaim, if you -- you know, if that's  
8 something that were possible, it would be  
9 highly surprising to me, based on market  
10 practice and, you know, my involvement in the  
11 European securities market, including  
12 understanding, you know, quite a lot about  
13 different tax regimes in that market, it  
14 would be very surprising.

15 But if it was the case that a  
16 receipt for a dividend compensation payment  
17 entitled you to a tax reclaim in Denmark,  
18 that's not something I've offered an opinion  
19 on.

20 Q Okay. But you would agree that  
21 whether or not what you described as a  
22 "dividend compensation payment" would entitle  
23 you to a tax reclaim in Denmark is a matter  
24 of Danish law.

25 Right?

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 175

1 MR. OXFORD: Object to the form.

2 A My opinion is that the contractual  
3 payment received in the facts that you asked  
4 me to assume would be a dividend compensation  
5 payment, and I expressed no opinion as to if,  
6 in those assumed facts, I had a voucher  
7 saying I received a dividend compensation  
8 payment.

9 I express no opinion as to what  
10 that would entitle me to do vis-a-vis the  
11 Danish tax authorities.

12 Q Okay. And so, your report, if I'm  
13 understanding correctly, expresses no opinion  
14 on whether or not the facts described in my  
15 hypothetical would lead to a valid tax  
16 reclaim application to Denmark.

17 Is that right?

18 MR. OXFORD: Object to the form.

19 A No, I don't think that's right. I  
20 mean, firstly, I don't think anything  
21 connected with your assumed facts is actually  
22 covered in my opinions or reports, so I think  
23 it's a gating issue.

24 I've expressed no opinion on your  
25 assumed facts in my report.

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 176

1 Q So your report expresses no opinion  
2 on that topic.

3 Right?

4 MR. OXFORD: Object to form.

5 A No. What I just said is that I  
6 expressed no opinions in my report on your  
7 assumed hypothetical because my report is on  
8 the actual transactions which I reviewed.

9 Q And are you otherwise able to offer  
10 an opinion based on my hypothetical,  
11 other -- even if you didn't do so in your  
12 report?

13 MR. OXFORD: Object to the form.

14 A An opinion as to what?

15 Q Are you otherwise able to offer an  
16 opinion about whether the facts of my  
17 hypothetical would lead to a valid reclaim  
18 for a pension plan even if you did not do so  
19 in your expert report?

20 MR. OXFORD: Object to the form.

21 A At the risk of restating my answer,  
22 I think I -- it is my opinion that on your  
23 assumed facts, what the pension plan would  
24 have received would have been a dividend  
25 compensation payment, and that if, having

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 203

1 financial institution who was active in the  
2 equity finance markets, and the market level  
3 for dividend compensation payments at that  
4 particular point in time was 90 percent of  
5 the gross dividend, it would be an irrational  
6 transaction for them to sell at any number  
7 above 73. It would be irrational for them to  
8 sell at any level below 90 if, on my  
9 assumption, the prevailing market level is  
10 90.

11 Q And is your assertion that the  
12 market level is 90 based on anything other  
13 than the price that you observed for the  
14 cum cum transactions?

15 MR. OXFORD: Object to the form.

16 A Yes. It's, you know, the -- in the  
17 course of my experience, particular markets  
18 in Europe at particular points in time tend  
19 to have a general level around which they  
20 trade.

21 And based on my experience,  
22 90 percent, give or take, tends to be the  
23 ballpark for a number of -- a number of  
24 markets.

25 Q What markets in Europe form the

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 204

1 basis for your experience?

2 A Sorry?

3 Q Which markets in Europe form the  
4 basis for your experience?

5 A Well, I can't remember the full  
6 list of markets. But, you know, in my time  
7 at Barclays, Barclays traded positions across  
8 nearly all the active main indices in Europe,  
9 so that certainly includes Denmark.

10 Q Are you relying on any other  
11 experience beyond Barclays or any other  
12 sources besides experience for that  
13 90 percent figure you cite?

14 MR. OXFORD: Objection to form.

15 A The first thing that I just want to  
16 be clear on is that the 90 percent is not a  
17 hard and fast number. And as I said, it can  
18 vary across market and it can vary across a  
19 particular dividend event, and I think I've  
20 made that point clear in my report.

21 But at the relevant time, I was  
22 working at Barclays and had responsibility  
23 for Barclays' equity finance activity, or at  
24 least a large portion of it. And based on  
25 that experience, it's my understanding that,

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 205

1 at that time, the market level in Denmark was  
2 somewhere around 90 percent.

3 Q Are you aware of any other entities  
4 besides pension plans who would have an  
5 economically rational basis to acquire a  
6 dividend at 90 percent of the gross dividend  
7 rate in Denmark?

8 MR. OXFORD: Object to the form.

9 A Yes.

10 Q Who else besides pension plans?

11 A Well, any range of financial  
12 institutions might want to acquire dividends  
13 at that level. Danske Bank, for example, was  
14 active in the European equity finance market.

15 I don't know the exact position of  
16 Danske Bank, but I would think that the  
17 dividend would almost be certainly worth at  
18 least 90, if not a hundred to them. Both  
19 European and U.S. financial institutions  
20 would almost certainly have been able to  
21 obtain value for 85.

22 In many cases, they were -- they  
23 also may well have been able to achieve a  
24 hundred, not necessarily through a tax  
25 reclaim, but through other mechanisms

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 255

1                   In other -- in relation to that,  
2                   there were often situations where the short  
3                   seller would have to withhold German tax on  
4                   that dividend compensation payment. But that  
5                   rule did not apply to -- and this is my  
6                   recollection -- that rule did not apply to  
7                   foreign financial institutions.

8                   And it was on the basis of that  
9                   understanding that a number of market  
10                  participants undertook cum ex transactions in  
11                  Germany.

12                 And as explained in this memo,  
13                 starting firstly in 2009, the German tax  
14                 authorities began a process of changing those  
15                 rules and issuing guidance around those  
16                 rules, which ultimately lead into a complete  
17                 change of the rules which had effect from the  
18                 beginning of 2012.

19                 Q     Mr. Wade, I just want to alert you  
20                 to the fact that I was reading from your  
21                 reply report that you disagreed with.

22                 So if you could turn to  
23                 Exhibit 5003, which is your reply, and go to  
24                 Page 5, Paragraph 10?

25                 A     I'm sorry. 5003?

CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 258

1           A     I have, from my time at Barclays  
2     and my responsibilities there, Barclays --  
3     every -- on an annual basis obtained legal  
4     advice relating to the types of equity  
5     finance transactions and execution rules in  
6     all the European jurisdictions in which it  
7     operated. There was an annual review of  
8     those rules and annual approval of execution  
9     guidelines.

10           And based on that understanding,  
11     and also my wider understanding of what other  
12     market participants were doing in the market  
13     at the relevant times, I outside -- as I say  
14     in this particular section -- outside of  
15     Germany and after 2012, before getting  
16     involved in this case, I was -- I had -- I  
17     would go further and say I have no awareness  
18     of people doing cum ex.

19           I think it's a positive view of the  
20     market that cum ex transactions did not work  
21     and could not work, and the main reason for  
22     that being that absent a very specific  
23     procedural rule which Germany had relating to  
24     compensation payments, there was no basis for  
25     it to work. Because if you receive a



CONFIDENTIAL  
Graham Wade – March 16, 2022

Page 260

1 that outside Germany, it was a very  
2 well-understood position of reputable market  
3 participants that a cum ex transaction could  
4 not give rise to a withholding tax reclaim.

5 Q So no specific knowledge of the law  
6 in Denmark.

7 Is that correct?

8 MR. OXFORD: Objection, asked and  
9 answered. I think twice.

10 MS. MCCARTHY: I actually haven't  
11 gotten a direct answer to that question,  
12 Neil, so I would like an answer to that  
13 question.

14 MR. OXFORD: My objection is on the  
15 record. If you -- you can answer the  
16 question, Mr. Wade, as many times as you  
17 like.

18 A As I've said, on the basis of the  
19 annual process that Barclays undertook and  
20 all the other knowledge I had in being  
21 involved in the market at the time, it is my  
22 understanding that the only place where any  
23 market participant thought that cum ex might  
24 give rise to a tax reclaim in the hands of  
25 the purchaser under a cum ex transaction was

**ERRATA SHEET**

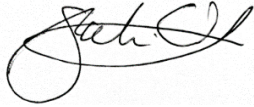
Case Name: In Re: Customs and Tax Administration of The Kingdom of  
Denmark (Skatteforvaltningen) Tax Refund Scheme Litigation  
Case Number: 18-md-2865  
Deponent: Graham Wade  
Deposition Date: March 16, 2022

<b>PAGE</b>	<b>LINE</b>	<b>ORIGINAL TEXT</b>	<b>CORRECTED TEXT</b>	<b>REASON FOR CHANGE</b>
24	12	obtain review	obtain and review	Transcription error
40	12-13	corporate finance manual	Corporate Finance Manual	Clarification
42	8	Unfortunately	Fortunately	Transcription Error
77	10	party	parties	Transcription Error
103	6	issues	issuer's	Transcription Error
117	11	the date	the trade date	Clarification
120	24	completed until on trade date	completed on the trade date	Transcription Error
127	3	tax group claim	tax reclaim	Transcription Error
163-164	22-1	it's a matter of public record that Barclays has executed cum ex transactions, but limited to -- as I say in my report, the nature of cum ex transactions changed significantly, so not in 2012.	it is a matter of public record that Barclays executed cum ex transactions but limited to the period before 2012 when the rules relating to German transactions changed significantly.	Transcription Error/Clarification
171	10	opinion conclusion	opinion and conclusion	Clarification
177	23	working group tax	working with group tax	Clarification

<b>PAGE</b>	<b>LINE</b>	<b>ORIGINAL TEXT</b>	<b>CORRECTED TEXT</b>	<b>REASON FOR CHANGE</b>
209	2, 5, 17	Cult	Colt	Transcription Error
211	1	Renaissance phrase	Renaissance transactions	Transcription Error
211	25	Cult	Colt	Transcription Error
214	7	Cult	Colt	Transcription Error
218	25	Nason Square and Flowana	Renaissance Technologies	Transcription Error
219	25	“SCMUS Prudence Committee”	“SCM US Approvals Committee”	Transcription Error
220	22	Cult	Colt	Transcription Error
221	7	LaRosa	LaRocca	Clarification
224	11	Cult	Colt	Transcription Error
225	25	referenced	represented to us	Transcription Error
226	12	Cult	Colt	Transcription Error
226	25	Pact	pack	Transcription Error
237	24	would be simply a trade receiver	would simply be a trade taker	Transcription Error/Clarification
240	7	Bluebird	Bloomberg	Transcription Error
254	23-24	rule, in title straight requires to issue	rule, entitled/required to issue	Transcription Error
258	13	say	see	Clarification

I declare under penalty of perjury under the laws of the United States of America that I have read the entire transcript of my deposition taking in the above captioned matter and the same is true and accurate, save and except for the changes and/or corrections as indicated by me on the deposition errata sheet hereof, with the understanding that I offer these changes as if still under oath.

Executed this 18th day of April, 2022

A handwritten signature in black ink, appearing to read "Graham Wade", is written over a light gray rectangular background.

---

Graham Wade